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18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

20 DREAM COLLECTIVE, INC., a
21 California corporation;

Case No: 15-cv-07871 RSWL-JPR
Hon. Ronald S. W. Lew

22 Plaintiff,

**JOINT RULE 26(f) REPORT AND
PROPOSED DISCOVERY PLAN**

23 vs.
24 MADEWELL, INC, a Delaware
corporation; J. CREW, INC., a Delaware
corporation; J. CREW GROUP, INC., a
25 Delaware corporation; MAURICE MAX,
INC. D/B/A LEE ANGEL, a New York
Corporation; and DOES 1 through 10,
26 inclusive,
27

Date: March 15, 2016
Time: 10:00 a.m.

28 Defendants.

1 Plaintiff Dream Collective, Inc. (“Plaintiff”), and Defendants Madewell, Inc.
 2 (“Madewell”); J. Crew, Inc. and J. Crew Group, Inc. (collectively, “Crew”); and
 3 Maurice Max, Inc. d/b/a Lee Angel (“Maurice”) (Madewell, Crew and Maurice are
 4 collectively herein referred to as “Defendants”) (Plaintiff and Defendants are
 5 collectively herein referred to as the “Parties”), hereby submit the following Joint
 6 Rule 26(f) Report and proposed Discovery Plan pursuant to Rule 26(f) of the
 7 Federal Rules of Civil Procedure and Local Rule 26-1.

8 **I. NATURE AND BASIS OF CLAIMS AND DEFENSES**

9 **A. Plaintiff’s Allegations**

10 Plaintiff alleges that Defendants Madewell and Crew, two affiliated
 11 companies, marketed and sold copies of pieces created by Plaintiff, constituting
 12 copyright and trademark infringement.

13 **B. Defenses**

14 Defendants deny Plaintiff’s allegations in the Complaint; including the claim
 15 that Plaintiff has a valid copyright for the “Snake Bangle,” that the goods offered for
 16 sale by Defendants are substantially similar to protectable elements of Plaintiffs’
 17 copyrighted design, or that Defendants had access to Plaintiff’s claimed original
 18 design. Any alleged use of the protectable elements within Plaintiff’s “Snake Bangle
 19 Design” (as defined in the Complaint) is, at most, de minimis and therefore not
 20 actionable. Defendants contend that Defendant Maurice had the right to purchase
 21 and sell the disputed goods subject of this action. Defendants acted in a
 22 commercially reasonable and lawful manner. Defendants further dispute and deny
 23 Plaintiff’s trade dress allegations concerning both the Snake Bangle and Snake Eyes
 24 Cuff. Plaintiff does not have trade dress rights in the Snake Bangle and Snake Eyes
 25 Cuff, nor is there a likelihood of consumer confusion. Plaintiff also has not been
 26 damaged in any way by Defendants’ alleged actions.

27 Defendants anticipate the following legal issues in this case:
 28

1. Whether Plaintiff owns a legally valid copyright for the Snake Bangle;
2. Whether Plaintiff has trade dress rights in the Snake Bangle and/or
3. Snake Eyes Cuff;
4. The scope of Plaintiff's claimed copyright and trade dress;
5. Whether Defendants are liable to Plaintiff for copyright infringement;
6. Whether Defendants are liable to Plaintiff for trade dress infringement and any related claims;
7. Whether and to what extent Defendants are liable to Plaintiff for any damages;
8. Any and all of Defendants' affirmative defenses.

12 **II. POSSIBILITY FOR PROMPT SETTLEMENT OR A SOLUTION**

13 The Parties are continuing to explore informal settlement negotiations, and
14 have agreed to mediate this dispute through a panel arbitrator. The Parties agree that
15 the Court ordered mediation shall be completed on or before May 13, 2016,
16 provided the Parties can appear telephonically at the mediation. If the panel
17 arbitrator does not consent to telephonic appearances, then the Parties agree that
18 mediation shall be completed no later than 45 days prior to the final pretrial
19 conference, consistent with Civil L.R. 16-15.2.

20 **III. ISSUES REGARDING PRESERVATION OF DISCOVERABLE
21 INFORMATION**

22 The Parties do not anticipate at this time any issues regarding the preservation
23 of discoverable information, but will work in good faith to resolve any issues that do
24 arise.

25 **IV. DISCOVERY PLAN**

26 **A. Timing of Rule 26(a) Disclosures**

27 The Parties propose that the initial disclosures required under rule 26(a) will

1 be made on May 2, 2016.

2 **B. Disclosure or Discovery of Electronically Stored Information**

3 The Parties do not presently anticipate any issues relating to disclosure or
4 discovery of electronically stored information, but will work in good faith to resolve
5 any issues that do arise.

6 **C. The Subjects on Which Discovery May Be Needed, Discovery Cut-
7 off, and Whether Discovery Should Be Conducted in Phases**

8 Discovery need not be limited nor conducted in phases.

9 The Parties jointly propose that the following discovery dates:

- 10 • May 2, 2015: Initial Disclosures deadline.
- 11 • May 13 to October 13: Fact discovery.
- 12 • November 30: Expert disclosures deadline.
- 13 • January 13, 2017: Rebuttal expert disclosures deadline.
- 14 • March 24, 2017: Expert depositions deadline.

15 **D. Claims of Privilege or of Protection of Trial Preparation Material**

16 The Parties do not presently anticipate any issues relating to claims of
17 privilege or of protection of trial preparation materials. However, if such issues
18 arise, the Parties reserve their rights to assert them as necessary.

19 **E. Changes in Limitations on Discovery**

20 The Parties do not presently anticipate that any changes in the limitation on
21 discovery should be made.

22 **F. Any Other Orders that Should Be Entered by the Court under
23 Rule 26(c) or Rule 16(b)**

24 The Parties presently do not envision any orders that should be entered by the
25 Court under Rule 26(c) or Rule 16(b).

26 **V. COMPLEXITY**

27 The Parties do not believe this is a complex case given the limited number of

1 parties and claims involved. Hence, the Parties believe that the Manual for
2 Complex Litigation should not be used.

3 **VI. MOTION SCHEDULE**

4 The Parties do not anticipate motion practice prior to the end of discovery,
5 except that one or more of Defendants may file a Rule 12(c) motion for judgment on
6 the pleadings concerning one or more of Plaintiff's claims, including its trade dress
7 claims. The Parties propose that any dispositive motions shall be brought no later
8 than April 2017 pursuant to a mutually agreed-upon schedule. Defendants anticipate
9 filing a Motion for Summary Judgment after discovery is concluded.

10 **VII. TRIAL ESTIMATE**

11 Plaintiff anticipates that the trial will probably last 5 court days.

12 **VIII. LIKELIHOOD OF OTHER PARTIES APPEARING**

13 At this juncture, the Parties do not anticipate additional parties may appear in
14 this action; and propose a deadline of July 1, 2016 for adding new parties.

15
16 All undersigned parties concur in the content of this Report, and have
17 authorized its filing.

18
19 Dated: March 1, 2016 ERIKSON LAW GROUP

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22 /s/
23 David Alden Erikson
24 Attorneys for Plaintiff Dream Collective, Inc.

25
26 Dated: March 1, 2016 COWAN LIEBOWITZ & LATMAN

27
28 /s/
29 Eric J. Shimanoff
30 Attorneys for Defendants Madewell, Inc.;
31 J. Crew, Inc.; J. Crew Group, Inc.

1
2 Dated: March 1, 2016

LAZARUS & LAZARUS

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4 /s/
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6 Harlan M. Lazarus

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Attorneys for Defendant Maurice Max, Inc.
d/b/a Lee Angel